THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Second Appeal No.481 of 1999

JUDGMENT:

This is an appeal by the unsuccessful 4th defendant under Section 100 of the Code of Civil Procedure, 1908 ('the Code' for short) assailing the decree and common judgment dated 31.12.1998 of the learned III Additional Chief Judge, City Civil Court, Hyderabad passed in A.S.Nos.302 of 1994 and A.S.No.246 of 1998 to the extent the 4th defendant is aggrieved by the decree and judgment in AS.No.246 of 1998.

2. I have heard the submissions of the learned counsel for the appellant/4th defendant bank ('the 4th defendant bank', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondents 2 to 4/defendants 1 to 3 ('the defendants 1 to 3', for brevity). I have perused the material record.

3. At the time of admission of this second appeal, this Court had formulated the following substantial questions of law.

> 1. **Whether there is any legal basis and evidence to support the finding that the appellant is responsible for removing the lock and handing over the plaintiff's factory?**
>
> **2. Whether the appellant has a legal liability to pay the damages in addition to 3rd respondent?**
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> **3. Whether the decree for future damages should be granted in the absence of appeal by the plaintiff?**
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> (Reproduced verbatim)

4.1 The learned counsel for the 4th defendant Bank/appellant herein would

contend as follows:

The trial Court had rejected the relief of future damages and had accordingly dismissed the suit of the plaintiff in regard to future damages. The plaintiff did not prefer any first appeal or cross appeal. However, the 1st appellate Court while disposing of the appeals preferred by the unsuccessful defendants had reversed the decree of the trial court insofar as future damages and had erroneously and illegally granted a decree for future damages to the plaintiff. The decree of the court below in that regard, which is irregular and illegal, is liable to be set aside. The Courts below did not properly appreciate the facts and the evidence in regard to the possession of the suit mulgi and the locks put on the suit mulgi and had erroneously held that the 4th defendant Bank is also liable to remove the lock and handover possession of the same along with the defendants 2 and 3 to the plaintiff. The 4th defendant Bank had only lent money on hypothecation of machinery and stock; but, has nothing to do with the lease and the termination of the lease. The 2nd defendant had admitted that after the Bank had removed the hypothecated items/articles from the mulgi and shifted the same to a godown, a lock was put by it on the suit mulgi. Therefore, the admission made by a responsible officer of the 2nd defendant in the written statement is sufficient to come to a conclusion that the 4th defendant-Bank is not responsible for putting the lock and not handing over possession of the suit mulgi to the plaintiff. The 4th defendant Bank is not liable to pay the damages awarded in a sum of Rs.20,866.66 ps with interest at 10% simple per annum from 24.07.1985 till realization by the plaintiff. The Courts below ought to have seen that the suit for recovery of loan filed by the 4th defendant Bank was initially partly decreed and later, the appeal filed by it was allowed. The instant decree against the 4th defendant Bank granted by the trial Court and confirmed by the appellate Court and the decree of the appellate Court making the 4th defendant Bank liable for future damages are erroneous and are liable to be set aside.

4.2 The learned counsel for the plaintiff/1st respondent while supporting the decrees and judgments of the courts below had contended as follows:

In the first instance, the Bank had put the lock on the suit mulgi in which not only the hypothecated machinery and stock but also the machinery and the stock, which are not hypothecated were also available. Thus, the Bank having put the lock had prevented the plaintiff not only from using the machinery and stock which are not hypothecated but also from carrying on the workshop business. The defendants did not remove the lock and did not conduct an inventory of the machinery and the stock in the suit mulgi and had failed to deliver possession of the machinery and the stock and also the suit mulgi to the plaintiff and had prevented the plaintiff from carrying on his business. Hence, they have become directly responsible for the losses incurred by the plaintiff. The circumstances in which the plaintiff was placed for no fault of him had resulted in his inability and incapacity to pay the debt due to the Bank and carry on his business. The contentions and the questions raised in this appeal are devoid of merit; and, no substantial questions of law are involved in the appeal and the second appeal is liable to be dismissed being devoid of merit.

5. The introductory facts are as follows: - 'The sole plaintiff/1st respondent herein had brought the suit (1) for a declaration that a notice dated 23.08.1986 issued by the A.P. Small Scale Industrial Development Corporation Ltd., (2nd defendant) to the plaintiff is illegal, invalid, null, void and not binding on the plaintiff; (2) for a mandatory injunction directing the 2nd defendant and the State bank of India, Hyderabad (4th defendant) to remove the lock put on the suit schedule mulgi situated at Craftsman Guild at Mallepally, Hyderabad after preparing an inventory of the machinery and the stocks which are pledged and hypothecated with the 4th defendant bank as per plaint 'A' schedule as well as the un-pledged and un-hypothecated machinery, tools, stocks and raw materials including account books, receipts, vouchers and documents belonging to the plaintiff as per schedule 'B'; (3) for possession of the suit schedule shop; (4) for a perpetual injunction restraining

the 2nd defendant and The Manager (Estates & Guilds), A.P. Small Scale Industries Development Corporation Ltd., (3rd defendant) and their men, agents and servants from allotting the suit schedule shop to any others; (5) for damages in a sum of Rs.20,866.66 ps for a period of 20 months and 26 days i.e., from 24.07.1985 to 20.04.1987 at the rate of Rs.1,000/- per month recoverable from the defendants 1 to 4; (6) for future damages at the rate of Rs.1,000/- per month from the date of the suit till the date of opening of the lock of the suit mulgi; and (7) for costs. The defendants 2 to 4 had resisted the suit. After full fledged trial, the trial Court had decreed the suit of the plaintiff. The decree granted by the trial Court reads as follows: -

1. **That the plaintiff is entitle for declaration directing the defendants 2 to 4 to remove the lock of the suit shop, and also entitle to permanent injunction against defendants 2 and 3 restraining them not to allot the suit shop to others. If the defendants 2 to 4 failed to remove the lock within one month from the date of this judgment, the same shall be done through the process of Court, and the plaintiff is entitle to continue his possession in the suit shop for running his workshop.**
2. **That the defendants 2 to 4 are hereby directed to make an inventory of the machinery, tools etc., existed in the shop, and handover them to the plaintiff for continuing his business. The plaintiff is directed to pay the rents to the 2nd defendant after appropriating an amount of Rs.7,751.27 ps which is in the hands of defendant No.2, and shall continue to pay the rent to the 2nd defendant.**
3. **The defendants 2 to 4 are directed to pay a sum of Rs.20,866.66 ps with 10% simple interest per annum from 24.07.1985 till realisation to the plaintiff.**
4. **The 4th defendant is hereby directed to pay the excess amount received by it towards decree debt, with interest at 10% P.A simple from the date of discharge of the decree debt till payment.**
5. **Future damages claimed by the plaintiff is hereby rejected.**

[Reproduced verbatim]

Aggrieved of the decree and judgment of the trial Court, the defendants 2 and 3 had preferred the appeal in A.S.No.302 of 1994 and the 4th defendant had preferred the other appeal in A.S.No.246 of 1998. The Court below had rendered a common judgment. The operative portion of the said common judgment reads as under:

'A.S.No.302/94:

In the result, the appeal is dismissed with costs and further ordered that the plaintiff is entitled to claim future damages

at the rate of Rs.1000/- per month from the defendants 2 and 4 on payment of court fee.

A.s.No.246/98:-

In the result, the appeal preferred by D.4 is partly allowed in respect of the decree directing D.4 to pay back the excess amount received by it towards decree debt in O.S.178/76. But the appeal in respect of granting damages is dismissed and further ordered that D.4 is also liable to pay future damages at the rate of Rs.1000/- (Rupees One thousand) per month along with D.2 and D.3 till the date of plaintiff is put in exclusive physical possession of the suit mulgi and in the circumstances of the case, there is no order as to costs.'

[Reproduced verbatim]

Aggrieved of the decree and judgment in A.S.No.246 of 1998 insofar as the same are against the 4th defendant bank, it had preferred the instant second appeal.

6. The following facts are not in dispute:

The 1st defendant gave site to the 2nd defendant for construction of shops/mulgies for establishing an industrial area at Mallepally. On such allotment of site, the 2nd defendant had constructed a number of shops. Out of the said shops, the suit schedule mulgi bearing shed no.1 was allotted to the plaintiff by the 2nd defendant under self-employment scheme for establishing a work shop under the name and style of M/s.Shah Mechanical Engineering works. The 2nd defendant had obtained a lease deed dated 29.01.1972 from the plaintiff. The possession of the shop was delivered to the plaintiff on 08.07.1971 subject to payment of monthly rent @ Rs.60/- and carrying on a work shop in the suit schedule mulgi.

7. The case of the plaintiff is this: 'The plaintiff had established his work shop in the schedule mulgi which was far from the general market and to which no private customers make visits. The said shop was under the supervision of the officer of the Government and the Government had provided machinery etcetera through bank loan. The 4th defendant bank had sanctioned a loan of Rs.35,000/- for purchase of machinery etcetera shown in

'A' schedule of the plaint. The said machinery etcetera in 'A' schedule was hypothecated to the 4th defendant bank. The plaintiff was obliged to repay the said loan amount in instalments. In the beginning the plaintiff wanted to manufacture coil winding machines. But, for not providing the pattons, the plaintiff could not manufacture coil winding machines. Then, on the report of the plaintiff, the Director of Commerce and Industries proposed that the plaintiff should manufacture pulvariser machines and informed the 4th defendant bank to provide machinery and accordingly the machinery was provided by sanctioning a loan for that purpose. The plaintiff had started manufacturing pulvariser machines. It was agreed that the Director of Commerce and Industries should get orders from big work shops to the plaintiff's workshop. The Director of Industries and Commerce should encourage the plaintiff in securing the customers for the purchase of the goods manufactured by the plaintiff in his work shop. The Director of Industries and Commerce could not secure any orders for the machines manufactured by the plaintiff in his work shop. On the other hand, pulvariser machines were purchased by the Government from other Companies. Thereby the plaintiff did not earn any profits and hence, he had incurred losses and could not pay the instalments payable to the 4th defendant bank.

The loan was advanced by the 4th defendant Bank at the instance of the 2nd defendant for purchasing the machinery etcetera that was shown in the 'A' schedule. The same was hypothecated to the bank and, therefore, cannot be taken away from the shop. The plaintiff had also purchased with his money machinery and tools etcetera, which are shown in the 'B' schedule and the same were also kept in the shop. The 4th defendant bank did not provide further finances when the plaintiff had suffered losses. When the plaintiff had failed to pay the instalments, the 4th defendant bank had put a lock on the suit mulgi on 11.03.1974 and prevented the plaintiff from carrying on the work in the work shop and had further filed OS.No.178 of 1976 on the file of the IV Additional Judge, City Civil Court, Hyderabad for recovery of Rs.48,706.20 ps which was said to be due from the plaintiff towards the aforementioned loan advanced by the 4th defendant bank. Earlier the suit was partly decreed on

05.12.1977 for Rs.13,130/-. The appeal in CCCA.No.97 of 1978 was preferred by the 4th bank before the High Court. While that appeal was pending, the plaintiff had filed CMP.No.16485 of 1982 to direct the 4th defendant bank to remove the lock put by it over the suit schedule mulgi. This Court had directed the 4th defendant bank i.e., the appellant in the above said appeal to remove the lock put on the suit schedule mulgi subject to the condition that the plaintiff herein shall deposit Rs.13,000/- on or before 20.01.1983. The plaintiff had deposited the said amount *vide* challan dated 18.01.1983 to the credit of the aforementioned suit of the 4th defendant bank and informed the same to the 4th defendant bank. The 4th defendant bank had filed appeal in LPA.No.14/83 challenging the above said order of this Court. This Court by an order dated 27.01.1983 had directed the 4th defendant bank to prepare an inventory of the machinery as well as the stocks which were hypothecated with the 4th defendant bank and to submit a list on 04.02.1983. In that LPA, the 2nd defendant got itself impleaded as one of the party respondents. The LPA was allowed on the further condition that the plaintiff shall furnish a bank guarantee for Rs.35,000/- within one month apart from depositing cash of Rs.13,000/- and with the further direction that the 4th defendant bank shall immediately open the lock put on the plaintiff's mulgi. That order was passed without prejudice to the claims of defendants 2 and 4 in the CCC.A.No.97/78. The said appeal was disposed of on 24.07.1985 directing the 4th defendant to open the lock put on the suit mulgi to enable the plaintiff to commence his work in the work shop and earn his livelihood. The High Court had postponed the payment of the decretal amount and allowed the plaintiff to pay the balance of decretal amount in instalments at the rate of Rs.2,000/- per month starting from 05.01.1986. The plaintiff has been paying the instalments as directed ever since 27.01.1983 and was pursuing the defendants 1 to 4 to remove the lock. Having postponed the issue, the 4th defendant bank has not complied with the final orders passed in LPA and did not remove the lock that was put by it over the lock of the plaintiff that was put on the suit mulgi. The 2nd defendant

demanded the plaintiff to pay the arrears of rent in respect of the suit mulgi though the plaintiff was not allowed to use it. As per the directions of the 2nd defendant the plaintiff had deposited Rs.2,035/- on 09.03.1983 and Rs.12,348.20 ps on 15.04.1986 by way of demand drafts apart from a sum of Rs.240/- which was already deposited with the 2nd defendant towards rents of the suit mulgi. In spite of depositing the entire arrears and excess amount and also advance rent for future months, the defendants 1 to 4 had failed to remove the lock put on the suit mulgi with a dishonest and malafide intention to cause wrongful loss to the plaintiff. A letter dated 23.08.1986 was issued with false allegations that the tenancy was terminated on 22.01.1979 and a crossed cheque for Rs.7,751.27 ps was also sent. The same was not accepted by the plaintiff, who is a tenant of the suit mulgi. No three months prior notice was given terminating the tenancy as per the terms of the lease deed. The said notice is illegal and invalid. The defendants are bent upon to allot the suit mulgi to some others and deprive the plaintiff of his valuable rights. The plaintiff had got issued a notice dated 20.10.1986 as contemplated under Section 80 of the Code and the same was received by the defendants 1, 3 and 4. The defendants 2 and 4 are liable to remove the lock which was unauthorisedly and illegally retained on the suit mulgi in spite of the orders of the High Court. Hence the plaintiff is also entitled to claim damages.'

8. The 1st defendant had not filed any written statement. The defendants 2 and 3 had filed a common written statement denying the material averments in the plaint but, stating that the 1st defendant provided the site for constructing shops by the 2nd defendant and that the 2nd defendant had sponsored self employment scheme for establishment of small scale industries in the shops constructed by it over the said site and that the 1st defendant had nothing to do with the shops and that the 2nd defendant had leased out the suit shop to the plaintiff on a monthly rent of Rs.60/- to establish his industry and had delivered possession of the same on 08.01.1971 and that the plaintiff had executed the lease deed on 29.01.1972

with the agreed terms and conditions mentioned therein. It was *inter alia* contended in the defence as follows: "The plaintiff having failed to pay the loan to the 4th defendant bank had left for Arab countries. Therefore, the 4th defendant bank had sealed the shop and filed a suit for recovery of money and the same was decreed in part. Hence, the 4th defendant bank had preferred an appeal. In the LPA 14 of 1983 the 2nd defendant was added as one of the respondents and the 2nd defendant in its pleadings had claimed that the tenancy was terminated and possession of the mulgi was taken over by the 2nd defendant after the 4th defendant bank had removed all the machinery from the shed in question and that the 2nd defendant proposed to lease out the mulgi to M/s.Tulja Engineering works, Hyderabad and that in the meanwhile the plaintiff had filed OS.2220 of 1979 on the file of IX Assistant Judge, City Civil Court, Hyderabad against the 2nd defendant and had obtained injunction orders restraining it from leasing out the shop. The plaintiff has not paid the arrears of rent. This Court in the orders passed in the LPA had observed that it shall be open to the 2nd defendant to continue in possession of the suit mulgi by keeping it under its lock and key by complying with the other directions in the said order. Thereafter, the plaintiff had withdrawn the above said suit as not pressed. No directions were given in the CCCA 97 of 1978 against the 2nd and 3rd defendants, who are not parties to the said appeal. The plaintiff himself sent the two demand drafts; and, after adjusting the amount due towards arrears of rent the balance amount was sent back by the 2nd defendant through a cheque and the same was received by the plaintiff. It was specifically mentioned that the DD for Rs.2,035/- was received without prejudice to its contentions. The 2nd defendant had already obtained possession of the suit mulgi by exercising powers vested in it under the lease deed dated 29.01.1972. The plaintiff himself is liable to pay damages at the rate of Rs.1,000/- per month to the 2nd defendant for his illegal action in filing the suit O.S.2220 of 1979 and preventing the 2nd defendant from leasing it out to any other industrialists. The letter dated 23.08.1986 is only an intimation letter and not a termination notice. The

terms of lease empowered the 2nd defendant to terminate the lease without waiting for three months notice and the 2nd defendant is empowered to enter into the premises under clause 6 of the lease deed in case of breach of the terms of the lease by the plaintiff. The lease was validly determined on 22.01.1979 and the action of the 2nd defendant in taking possession and re-entering the suit mulgi is lawful and valid and the same cannot be challenged by the plaintiff. The plaintiff did not challenge the validity of termination notice. The plaintiff is not entitled to claim redelivery of the possession of the suit mulgi. He had kept the mulgi idle for nearly three years without paying any rent and had left for Arab countries and had acted in contravention of the terms of the lease. The 2nd defendant had taken possession of the shed in question lawfully and had placed its lock over the same after the 4th defendant bank had removed the machinery installed in it and shifted the same to its godown. The plaintiff is alone responsible for not running the business and he cannot blame either the 2nd defendant or the 4th defendant bank. The 2nd defendant sent a suitable reply to the notice dated 22.12.1986 of the plaintiff. The claim is untenable. The plaintiff is not entitled to any reliefs. The relief of recovery of possession is not valued as required under law and the required court fee is not paid."

9. The 4th defendant bank had filed a written statement admitting the advancement of loan, the filing of the suit for recovery of the debt due to the bank, the filing of the CCCA and the LPA and the recovery of the decree debt but, had contended that the 4th defendant Bank has nothing to do with the lock put by the 2nd defendant and had stated that no relief can be granted against the 4th defendant bank.

10. This second appeal is preferred by the 4th defendant bank alone assailing the decree and judgment in one of the two appeals viz., A.S.246 of 1998 insofar as the decree in the said appeal is against the Bank.

10.1 Dealing first with the aspect of the decree of the Court below granted in

favour of the plaintiff and against the defendants 2 to 4 for future damages and the further direction in that decree that the 4th defendant shall also pay future damages at the rate of Rs.1,000/- per month along with the defendants 2 and 3, what is to be noted is that the trial Court while dismissing the suit in regard to future damages had mentioned in the operative portion of the judgment and in the decree that 'the relief of future damages claimed by the plaintiff was rejected'. No first appeal was preferred by the plaintiff assailing the said portion of the decree though the decree of the trial court was against the plaintiff in this regard. Not even cross objections are filed in the first appeals preferred by the defendants 2, 3 and 4. As per the provision of Order XLI in the Code dealing with 'appeals from decrees', any respondent in the first appeal, though he may not have appealed from any part of the decree, may not only support the decree but may also contend that a finding against him in the court below in respect of any issue ought to have been in his favour, but, he cannot canvass that the finding that was recorded against him by the court below in respect of any issue ought to have been in his favour when he is not supporting the decree in that respect and is seeking a reversal of the decree. This legal position is clear from the provision of Rule 22 of Order XLI of the Code. When no appeal or cross appeal or cross objection is preferred by the plaintiff, he cannot canvass a finding against him and seek reversal of a decree against him, as per the settled law. Coming to the instant case facts, the decree of the trial Court was against the plaintiff as the trial Court rejected the claim of the plaintiff for future mesne profits/future damages. Therefore, in the first appeals preferred by the defendants 2, 3 and 4, it is impermissible under law for the plaintiff to seek reversal of the decree of the trial court which was against him insofar as future damages is concerned, as he had admittedly not filed an independent appeal or cross objections in the appeals preferred by the said defendants. Therefore, the decree granted by the first appellate Court in favour of the plaintiff awarding future damages against the defendants and ordering the 4th defendant also to pay the future damages deserves to be set aside straight away being illegal and not in accordance with law. Though the decree for future damages was erroneously and illegally granted by the court below in favour of the plaintiff

and against the defendants 2 to 4, the 4th defendant alone had preferred this second appeal assailing that portion of the decree also; however, no second appeal was preferred by the defendants 2 and 3. Rule 33 of Order XLI of the Code reads as under:

> '**Power of Court of Appeal – The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:**
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> **Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.**

In view of the provision of law, in the well considered view of this Court, the decree insofar as future damages granted by the court below is liable to be set aside against all the defendants 2 to 4. The substantial question no.3 is accordingly answered holding that the decree of the appellate Court granting future damages against the defendants 2 to 4 is illegal and is, therefore, liable to be set aside.

10.2 Dealing next with the decree against the 4th defendant Bank granted by the trial Court and confirmed by the court below insofar as it related to a direction to remove the lock put on the suit mulgi and deliver possession of the same to the plaintiff, what is to be noted is that the 4th defendant Bank had first put its lock on the suit mulgi and later, the 2nd defendant, being the lessor, had also put a lock on the suit mulgi. The said facts are not in dispute. The operative portions of the judgments of the courts below are already extracted supra. The 4th defendant Bank which has first put the lock over the workshop premises/suit mulgi of the plaintiff without making an inventory in regard to the machinery and stock available in the premises is bound to

account for the machinery and stocks, which were available in that shop premises. It is pertinent to note that the 2nd defendant in its written statement had categorically averred as under: "The 2nd defendant had taken possession of the shed in question lawfully and had placed its lock over the same after the 4th defendant bank removed the machinery installed in it and shifted to its godown." Therefore, it is evident from the pleadings that the 4th defendant Bank had removed the machinery installed and had shifted the same to its godown. For that reason also the 4th defendant Bank has to account for the machinery and stocks etcetera that are available in the suit mulgi which is out of possession of the plaintiff as a consequence of the 4th defendant Bank first putting the lock over the suit mulgi. On an analytical examination of the material record, this Court is satisfied that the pleadings were accurately considered and the evidence that was brought on record was appreciated in the right perspective by both the courts below while granting the relief in this regard against the defendants 2 to 4. The 4th defendant Bank could not show that the said finding is unsustainable for any reason and there is nothing on record to hold that there is non-consideration or mis-appreciation of material facts and material evidence brought on record. Therefore, in the well considered view of this Court, the courts below were justified in granting a decree against the 4th defendant Bank and in directing it to make an inventory of the machinery, tools etc., that existed in the shop, and handover them to the plaintiff for continuing his business. Hence, the contentions of the 4th defendant Bank in this regard are devoid of merit and the questions raised have no substance.

10.3 Dealing in the end with the other part of the decree granted against the 4th defendant-Bank and in favour of the plaintiff, it is necessary to examine the liability or otherwise of the 4th defendant bank to pay the quantified and awarded damages with interest. The trial Court had granted a decree in favour of the plaintiff and against the defendants 2 to 4 and had directed them to pay Rs.20,866.66 ps with 10% simple interest per annum from 24.07.1985

till payment or realisation. The evidence brought on record shows that the 4th defendant bank had admittedly put the lock on the mulgi wherein the machinery and stock hypothecated as mentioned in 'A' schedule and the other machinery and stock which are not hypothecated/pledged and mentioned in 'B' schedule are located. The bank did not conduct an inventory either before putting the lock or at any time later. When admittedly some other machinery and stock which are not hypothecated or pledged are in the premises, the bank ought not to have put a lock and prevented the plaintiff from using the same. Even after a part of the decretal amount was deposited as per the orders of this Court and even after the directions that were issued by this Court in the civil appeal-CCCA.97 of 1978, the lock was not removed either by the 4th defendant bank or the 2nd defendant. The defence of the defendants 2 and 3 would show that the said defendants had put the lock on the mulgi after the 4th defendant bank had removed the machinery, stock etcetera available in the mulgi to its godown. Therefore, the bank is liable to account for the value of the said machinery and the stock. Though a decree was also granted against the defendants 2 and 3 in regard to payment of damages in a sum of Rs.20,866.66 ps with interest no second appeal has been preferred by the said defendants. Both the courts below having accurately considered the facts and appreciated the evidence in the correct perspective have recorded concurrent findings of fact on this particular issue while granting the decree for the above said sum with interest against the defendants 2 to 4. The said finding, in the facts and circumstances of the case is possible and plausible and therefore, even if another view may be possible this Court shall not substitute such a view as it is impermissible and unwarranted in the facts and circumstances of the case and in the light of the evidence available on record. On an analytical examination of the facts and the evidence borne out by the record, this Court finds that there is no misconstruction of the pleadings and mis-appreciation of the evidence and that the courts below have not acted on no evidence and have not drawn any wrong inference from proved facts while granting a decree against the defendants 2 to 4 and in favour of the plaintiff on this particular issue. The

question raised as substantial question of law on this issue is in fact a pure question of fact and not a question of law let alone, substantial question of law and there is no substance in the question raised. Therefore, the contentions on this particular issue involved in the *lis* are liable for rejection being devoid of merit. The said contentions are accordingly rejected. Having regard to the reasons, this Court finds that the second appeal insofar as the request to set aside the decree on this issue concerning damages fails and is liable for dismissal accordingly.

11. In the result, and in view of the findings supra, the second appeal is allowed in part and the decree of the Court below to the extent of granting future damages to the plaintiff against the defendants 2 to 4 is hereby set aside. However, the findings of the Court below in all other respects shall hold good. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

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M. SEETHARAMA MURTI, J

26th August, 2015
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